ence, reviews the economic struggle between employer and employee during the past century, and concludes that the denial of the injunction was merely a denial of a rule of law in which planitiff had no vested right.

In commenting on the decision it would seem superfluous to do more than call attention to the arguments of the members of the court. They are the best commentaries on the case that can be given; and yet, in spite of a thorough agreement with the result which the majority of the court reached, it would seem as though the argument of the minority is unanswerable—the remedy by injunction is a mere method of procedure, just a rule of law, and subject to change and modification by the legislature as it sees fit. There is a hint to the contrary by Mr. Justice Pitney, however, in *Arizona Employers' Liability Cases,* 250 U. S. 400, 421, where the court says: "Rules of law are not placed by the Fourteenth Amendment beyond the reach of the state's power to alter them through legislation designed to promote the general welfare, so long as it does not interfere arbitrarily and unreasonably and in defiance of natural justice." The Supreme Court has held that a state may deprive a person of a right to a trial by a common law jury without violating due process or equal protection. *Maxwell* v. *Dow,* 176 U. S. 581. Is the right to an injunction more sacred? Certainly the process of injunction cannot claim the antiquity of trial by jury; may it not also be denied by a state? If we are to take the case on its facts and simply characterize the entire proceeding which the decision had to meet as arbitrary and contrary to the principles of justice, the decision of the court may perhaps be upheld, as in the tax case of *Norwood* v. *Baker,* 172 U. S. 269. But if the case is an authority for the proposition that the legislature cannot change or prohibit the use of the injunction in certain cases, it is indeed difficult to understand the reasoning of the court and to avoid the logic of Mr. Justice Pitney in his dissent.

In the New York supreme court an injunction was issued at the request of a labor union against an employer, *International, etc., Union* v. *Cloak, etc., Manufacturers' Association,* N. Y. Supreme Court, Jan. 11, 1922, thus putting the shoe of government by injunction on the capitalist foot, and giving labor the benefit of a law so often denounced. But regardless of this decision's converting the unions to the use of the injunction, the majority of the United States Supreme Court have no doubt as to the legality and efficacy of the injunction in controversies between employer and employee.

W. C. O'K.

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WORKMEN'S COMPENSATION—EMPLOYER'S RIGHT TO SUBROGATION AND EFFECT OF PAYMENT BY WRONGDOER.—Nice questions are continually arising under the Workmen's Compensation Acts with reference to the employer's right to be subrogated to the employee's rights against third persons, and the effect of payment by the wrongdoer to the employee. A recent Iowa case, *Renner* v. *Model Laundry, Cleaning & Dyeing Co.* (1921), 184 N. W. 611, presents the problem very pointedly. In that case the plaintiff's intes-

tate, while in defendant's employ, was injured by the collision of a street railway company's car with the laundry wagon which he was driving. For a consideration of $750 the injured employee covenanted not to sue the railway company for or on account of the injuries or damages sustained by him in the collision, it being expressly stated that the instrument was not a release of the railway company, or the employer, or any other corporation, firm, or person. Under the Workmen's Compensation Act (Iowa Code Supp., 1913, sec. 2744m6), it is provided that where an employee's injury has been caused under circumstances creating a legal liability in some person other than the employer, the compensation shall be reduced by the amount of damages recovered by the employee therefor. In an action for compensation by the administrator of the injured employee, it was *held* that the defendant employer was not entitled to a reduction of the compensation to the amount received by the employee for the covenant not to sue.

The court placed its decision primarily on the ground that no facts were alleged or proved showing that the injury was received under circumstances which would create a legal liability in some person other than the employer; hence the statutory basis for relief had not been established. Just what facts would be deemed to show "legal liability" on the part of such other person is not altogether clear. The payment of such a substantial sum by the railway company for the covenant not to sue would seem to raise a presumption of liability therefor. It is true that a mere gratuity received by the employee from the injuring party does not raise such a presumption and is not deducted from the employee's claim for compensation. See *Blackford* v. *Green*, 87 N. J. L. 359. In this connection the holding of the court in *Rosenbaum v. Hartford News Co.*, 92 Conn. 398, is instructive. In that case the employee of a news company was injured by a railroad company's car, and the railroad company voluntarily paid the employee $3000 for a release from all rights of action, claims, or demands for or by reason of any injuries sustained by the employee in the accident. In an action by the employee against his employer under a Workmen's Compensation Act containing the same provisions as the Iowa act, it was held that the news company was entitled to have the money paid the injured employee by the railroad applied to the discharge of its own obligation to the employee under the act. The commissioner had found that the railroad was "apparently liable," but its legal liability had not been determined, and the payment was made voluntarily. The court said: "The written contract does not establish the legal liability of the railroad company. But so far as the claimant is concerned, the contract assumes the existence of such a liability, and in this proceeding between the injured employee and the employer the claimant cannot equitably be permitted to take any other position than that the $3000 was received in partial satisfaction of a valid claim for damages." To the same effect see *Page* v. *Burtwell*, [1908] 2 K. B. 758; *Cripps' Case*, 216 Mass. 586, decided under acts similar to that in the principal case. Although the court in the principal case refused to allow it, it

is submitted that the same holding might be applied to a covenant not to sue as well as to a release.

Assuming a legal liability on the part of the railroad company in the principal case, an interesting question might arise as to whether the consideration received for the covenant not to sue would be "damages" within the meaning of the statute. The court in the principal case held that the burden of proof was on the employer to show that the employee had really "recovered damages" from the railroad company, and not on the employee to negative that possibility. The court did not indicate what it would regard as damages, but certainly within the popular sense of the word, money received in such a way would be "damages." Unless such an interpretation were allowed, the possibility of a double payment by the injuring party would be presented, since the court held that the injured employee, entitled to compensation under the Compensation Act, could in no way by an agreement not to sue the wrongdoer deprive the employer, or his insurer, of the right of subrogation to the employee's right to recover damages against such wrongdoer. The third party not having paid damages would not even have a partial defense against the suit of the employer, and his only possible recourse would be against the employee—a very doubtful and unsatisfactory recourse. On the other hand, if he were held to have paid damages, he would be protected under the holding in *Southern Surety Co.* v. *Chicago, St. P., M. & O. Ry. Co.*, 187 Iowa 357, to the effect that the amount paid by an insurance carrier to an injured employee cannot be recovered by the insurer from the actual wrongdoer from whom the employee recovered full damages before payment of compensation. But see *Murphy Const. Co.* v. *Serck*, 104 Neb. 398, where it was held that a negligent third party who, without the concurrence of the employer of the injured employee, settled with the latter could not affect or preclude the employer's right to recover for damages sustained by the employee to the extent of the compensation awarded.

In general, one paying compensation to an injured servant under a Workmen's Compensation Act is entitled to be subrogated to the rights of the servant against a third person liable for such injury. *Mayhugh* v. *Somerset Telephone Co.*, 265 Pa. 496; *Carlson* v. *Minneapolis St. Ry. Co.*, 143 Minn. 129; *Labuff* v. *Worcester Consol. St. Ry. Co.*, 231 Mass. 170; *Houlihan* v. *Sulzberger & Sons Co.*, 282 Ill. 76. But see *Newark Paving Co.* v. *Klotz*, 85 N. J. L. 432, for a holding to the contrary. In *Western States Gas & Electric Co.* v. *Bayside Lumber Co.*, 182 Cal. 140, it was held that the employer, on payment of compensation to the injured employee, might sue the third party responsible for the injury, and the recovery was not limited to the compensation paid; but any recovery over that amount was for the benefit of the injured party. See also *Gones* v. *Fisher*, 286 Ill. 606; *Otis Elevator Co.* v. *Miller & Paine*, 240 Fed. 376; *Casualty Co. of America* v. *Swett Electric Light and Power Co.*, 162 N. Y. Supp. 107. However, in *Black* v. *Chicago Great Western R. Co.*, 187 Iowa 904, it was held that the

employer was subrogated only to the extent of the compensation paid, if it was less than the damages due from the third person, and that such subrogation did not involve a splitting of causes of action. See also *Albrecht Co.* v. *Whitehead & Kales Iron Works,* 200 Mich. 109; *Houlihan* v. *Sulzberger & Sons Co., supra.*

On the basis of strict statutory construction, the decision in the principal case is perhaps justifiable. No unjust result is arrived at so far as the employer is concerned, for he may recover from the injuring party the amount he is forced to pay as compensation. But the purpose of the Workmen's Compensation Act is to entitle the employee to full indemnity, but no more, and to put the common law damages, but no more, on the third party. It would seem, therefore, that the court might better have given effect to such purpose instead of opening up the possibility of a recovery of more than complete indemnity by the employee. C. Y. M.